

**UNITED STATES COURT OF APPEALS  
FOR THE EIGHTH CIRCUIT**

MoSenecaManufacturer, LLC  
doing business as American  
Tripoli,

Petitioner,

v.

Federal Mine Safety and  
Health Review Commission;  
Secretary of Labor,

Respondents.

No. 25-1349

MSHA Case No. CENT 2023-0251

**PETITIONER'S OPPOSITION TO SECRETARY'S MOTION  
FOR LEAVE TO FILE AN UNTIMELY MOTION TO  
DISMISS FOR LACK OF JURISDICTION**

The Court should deny the Secretary of Labor's (Secretary) motion for leave to file an untimely motion to dismiss. *See* 8th Cir. R. 47A.

The Clerk of the Court likely does not have discretion to grant this motion because it is not one of the motions listed in 8th Cir. R. 27A(a)(1)–(25); it would go to a “panel of three judges.” *See* 8th Cir. R. 27A(a); 27A(c).

There is no good cause to grant the motion. Even giving the Secretary the benefit of the doubt, *see* Mot. at 3–4 (discussing procedural

history of this case), the motion to dismiss was due 14 days from March 6, 2025, *viz.* March 20, 2025. The Secretary waited an additional *six weeks* to file this motion for leave to file an untimely motion to dismiss, and has not explained the reason to excuse this tardiness.

Also, the jurisdictional argument the Secretary wishes to advance via its untimely motion to dismiss can be made with equal force in the Secretary's response brief under Fed. R. App. P. 28(b)(2), without the need to waste the Court's and the parties' resources on a separate motion to dismiss. This is, therefore, not the unusual case where the Secretary would be prevented from making the jurisdictional argument later because jurisdictional arguments "can never be forfeited or waived" by the parties. *Union Pacific R.R. Co. v. Bhd. of Locomotive Eng'rs & Trainmen Gen. Comm. of Adjustment, Cent. Region*, 558 U.S. 67, 81 (2009).

The Secretary has, thus, not shown good cause to obtain leave to file an untimely motion to dismiss.

DATED: May 5, 2025.

Respectfully submitted,

/s/ Aditya Dynar

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## CERTIFICATE OF COMPLIANCE

This document complies with Fed. R. App. P. 27(d)(1)(E), 27(d)(2)(A) because:

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- it contains 281 words, excluding the parts exempted by Fed. R. App. P. 32(f).

Counsel also certifies that the document has been scanned for viruses and it is virus-free.

DATED: May 5, 2025

/s/ Aditya Dynar  
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## CERTIFICATE OF SERVICE

I hereby certify that I electronically filed the foregoing with the Clerk of the Court for the United States Court of Appeals for the Eighth Circuit by using the appellate CM/ECF system on May 5, 2025. I certify further that the foregoing document was served on all parties or their counsel of record through the appellate CM/ECF system.

/s/ Aditya Dynar  
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